



Zakat made simple.

For superannuation

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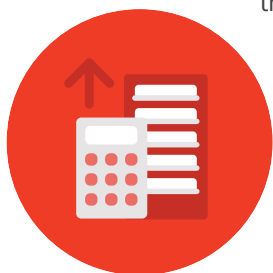
How do I calculate zakat on my superannuation?

The answer to this question is complex, multifaceted and requires expertise. Only those who are qualified in Islamic jurisprudence and Usul-Fiqh can make intellectual interpretations on how the laws on zakat should be applied to new types of wealth such as superannuation and retirement

investment funds. The complexity lies not only in defining these assets so that they may be compared to assets

referred to in the Sunnah and Shariah, but suffice to say that the definition of superannuation as an asset is not the only test applied in the process of deciding whether zakat is payable on an asset. Scholars also apply the tests used by classical scholars such as the criteria of ownership, growth, nisab and the haul in the ijtiḥad on this issue.

(Zayas, 2008)



Firstly, an understanding of Australian laws that govern superannuation is necessary, to allow for an understanding of how scholars may approach the question of zakat on Superannuation.

Superannuation in Australia

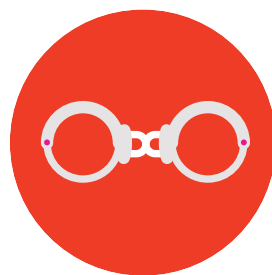
Superannuation is a long term financial investment product that has been used by some as a means of saving for retirement since the early 1900's. (Berrill, 2014) However in 1992 the Australian government introduced compulsory superannuation as a support mechanism and “savings vehicle” to reduce the financial burden on the government to fund the needs of an increasing ageing population in retirement. (Berrill, 2014) Superannuation funds provide savings in the form of lump sum payments to fund members, monthly superannuation payments or a combination of both at retirement.

Laws on contributions to superannuation funds

By law employers must make contributions consisting of 9.5% of ordinary time earnings into a specified or unspecified superannuation fund (pending new legislation: see treasury.gov.au) on behalf of employees that earn a minimum \$450 per month before tax. This is to ensure that all workers have a compulsory nest egg for retirement. It is referred to as the super guarantee (SG). Superannuation Guarantee(Administration) Act(commonwealth). However there are options for individuals to increase their retirement investments via voluntary contributions (capped at \$30,000 per annum) in addition to compulsory superannuation. These contributions provide tax benefits to the members because they are paid out of pre-tax earnings and they reduce the assessable income of the individual resulting in a lower tax bill. Salary sacrifice contributions are taxed at 15% rather than at 32.5%. (*Moneysmart.gov.au*)

Laws governing access to superannuation funds

The laws governing the management of superannuation also include rules restricting access to the funds. Fund members have limited control over their wealth and generally can only receive it at retirement or in capped amounts, under some extreme circumstances when they have met certain conditions. The criteria may vary slightly between funds but generally partial or complete lump sum payments to members are possible depending on whether the individual has reached preservation age (before 65yrs) and retires or retires at age of 65. Circumstances where special consideration may be given by the fund trustee to allow the early release of a limited amount of funds include: financial hardship, incapacity due to disability, severe or terminal illness. Application for consideration to the trustee does not guarantee acceptance and is up to the discretion of the trustee. In addition these sums are subject to taxes and costs related to the release of the funds. However there are other exceptions to the rule.



For example some cases may arise where individuals have part of their superannuation not preserved as they were part of funds established before July 1, 1999. This component may be accessed at any time.

At present in Australia

In Australia at present the advice or e-fatwas that have been published on the issue of zakat on superannuation products, have advised that zakat is due on this new type of wealth. It is important to note that each financial arrangement in relation to superannuation will differ from one individual to another. This is based on each individual's level of involvement or participation in the management of their fund. The 9.5% contribution is based on the compulsory portion that has been legislated for employers to pay into specified funds and all super funds will at the minimum consist of this component. Alternatively, some employees and business owners may choose to contribute voluntarily via their pre-tax salary or arbitrary amounts, to increase their investment in Superannuation. This alters the financial structure and nature of the asset and will impact the way in which zakat is levied. Therefore any deliberation of zakat on Superannuation must take into consideration voluntary and compulsory components of super as the structure will affect the rights and responsibilities of the individual in regards to the zakat payable on their Superannuation.

There are two approaches that have been followed in providing guidance on the issue of zakat on superannuation in Australia. These have mainly consisted of advice by Islamic organisations or through personal inquiries made by the general public via e-fatwa sites on the internet. It is noteworthy the advice provided has been based on fatwas by qualified scholars on similar cases found globally.

Zakat in Australia

THE FOLLOWING ADVICE / E-FATWA RULINGS ARE INDICATIVE OF THE NORMATIVE PRACTICE IN AUSTRALIA.

Zakat on Voluntary contributions to superannuation funds

This is based on the assumption that the individual/fund member is making voluntary payments in addition to the compulsory 9.5% contributions made by the employer into a superannuation fund out of ordinary time earnings. The amounts may be varied and as mentioned earlier are capped at \$30,000 per annum. The definition of voluntary contributions also includes contributions made by business owners and individuals with self-managed funds.

Note: The voluntary contributions may consist of regular salary sacrifice contributions or arbitrary amounts invested at the individual fund members' discretion and financial capacity.

Basic structure of superannuation fund which includes voluntary contributions

Compulsory contributions (9.5% of ordinary time earnings) (CC) per annum + voluntary contributions (VC) per annum = Total Investment into superannuation fund per annum (TI)

Note: This represents a simplified structure of this type of fund. Each individual needs to assess his own personal circumstances when calculating zakat on his excess wealth.

- Zakat is due on voluntary contributions made to superannuation funds and payable yearly onwards from the point it reaches nisab. (Kahf, 2015)

- According to Mufti Desai: ***“Zakat is applicable on all voluntary contributions you have made towards the superannuation scheme. However since the money is not in your possession, Zakat will not be levied at this moment but only once you get physical possession of it.”*** (Lambat, 2015)



- It has been advised by some scholars to calculate and pay zakat yearly to prevent errors and confusion.
- The rate of zakat is at 2.5% of the value of the contributions.
- Zakat is payable each lunar year (haul) until the receipt of the money at retirement.
- In circumstances where an individual removes money from his/her fund at any time before retirement, zakat is due if the amount equals the nisab. It is calculated at the rate of 2.5%.

These points have been based on the views of following scholars: Mufti Desai, Imam Qasmi and committee of scholars for the Fiqh Council of North America, Dr, Monzer Kahf and Professor Abdul Aziz Al-Qassar (Faculty of Shariah) Kuwait University.

Zakat on non voluntary contributions to superannuation funds (compulsory contributions)

BASIC STRUCTURE OF SUPERANNUATION CONSISTING OF COMPULSORY CONTRIBUTIONS:

Compulsory contributions (9.5% of ordinary time earnings) per annum = Total investment into superannuation fund per annum.

- Zakat is not levied during the lifetime of superannuation funds, where the contributions consist only of the 9.5% compulsory component. (i.e. no voluntary contributions are being made into this fund)
- Zakat is only calculated and payable when the wealth can be accessed at retirement. This is due to the application of the criteria of ownership on zakatable wealth. Scholars have ruled that since the individual is not

in control of and cannot spend at will from the wealth, ownership can only be acknowledged when the money is received. Professor Abdul Aziz Al-Qassar (Faculty of Shariah) Kuwait University (Lambat, 2015), Sheikh Yusuf Qaradawi (Rahman, 2012) and Dr. Monzer Kahf support this view. (Kahf, 2015)

- According to Mufti Faizal Riza ***“...it is not compulsory to pay zakat on one’s superannuation money until one gains access to it (i.e. when one reaches the age of retirement.) And when one does gain access to it, he will not have to pay zakat on it for previous years; he will merely have to pay zakat on it from then onwards. This is also the view of Mufti Emran Vawda, Mufti Munib Ahmad Ebrahim Desai.”*** (Riza, 2015)
- Zakat is payable at the time of receipt of the wealth vested in the Superannuation fund. (Rahman, 2012)
- In contrast Imam Qasmi and scholars from the Fiqh Committee of North America have a different view in the timing of the zakat due on this wealth. They include the criteria of the haul in their ruling and are of the opinion that one lunar year needs to pass after the receipt of the wealth from the Superannuation fund before zakat is due. (Lambat, 2015)
- Mufti Desai also rules it is to be included in the calculation of zakat from this point onwards. (Riza, 2015)
- Zakat is not due for the previous years which constitute the lifetime of the fund, as the individual did not have access to the funds. (Rahman, 2012)



Note: These points are based on the fatwas of Sheikh Yusuf Qaradawi, Dr. Monzer Kahf, Imam Qasmi, Mufti Riza, Mufti Vawda and Mufti Ahmad and Mufti Desai on compulsory contributions to superannuation funds.

Examples of Zakat calculation

- 1) Lump Sum received at retirement - prescribed tax due = Zakatable Amount (Rahman, 2012)
- 2) Withdrawal Amount before retirement – (prescribed taxes and penalties) = Zakatable Amount (Al-Qudah, 2015)

Conclusion

The issue of Zakat on superannuation is a complex question and it requires research, scholarly inquiry and ijihad by qualified jurists to provide a solution for Australian Muslims, on how to calculate zakat on Superannuation. At present Muslims in Australia are relying on

rulings based on models used in other countries. This is not feasible for the long term as the structure and legislation on Superannuation differs from country to country and therefore impacts the way in which zakat is levied on this type of wealth. Investigation and analysis of the finer points of difference need to be conducted. In view of this, research is being undertaken in the form of an academic paper to construct a more detailed perspective of the issue of zakat on superannuation in Australia. It will include a study of responses on this issue made by jurists/scholars in other contexts, which may provide clarity and a framework for a comprehensive discourse on the subject.

Allah Knows Best.

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